

STATE OF MICHIGAN
COURT OF APPEALS

LYNDA CARTO,

Plaintiff/Counterdefendant-
Appellee,

and

JANE STAEBEL, JULIE MCCARVER,
PATRICIA SELENT, D. JEANETTE SULLIVAN,
JULIA SNEAD, THOMAS UNDERWOOD, and
THE JOHN G. UNDERWOOD TRUST,

Plaintiffs/Counterdefendants,

v

UNDERWOOD PROPERTY MANAGEMENT
COMPANY,

Defendant/Cross-Defendant-
Appellee,

and

GLENN UNDERWOOD,

Defendant/Counterplaintiff/Cross-
Defendant/Cross-Plaintiff-Appellee,

and

CHARLES UNDERWOOD,

Defendant/Counterplaintiff/Cross-
Plaintiff/Cross-Defendant,

and

MARY LOU UNDERWOOD,

UNPUBLISHED

June 29, 2010

No. 288251

Oakland Circuit Court

LC No. 2004-056175-CB

Appellant.

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Appellant Mary Lou Underwood appeals by right the trial court's order of specific performance requiring her to purchase a parcel of real estate pursuant to her court-approved offer to purchase the property for \$46,500, or be liable for any deficiency if the property was sold for a lower price. The property was owned by defendant Underwood Property Management Company (UPMC), a partnership undergoing court-supervised dissolution. Because we conclude that appellant's arguments are without merit, we affirm.

Appellant argues that the trial court's order requiring her to purchase the property, or be liable for any deficiency, was improper for several reasons, including that it was entered without due process and equal protection, it violated several protective conditions in her original purchase offer, her prior agreement to purchase the property pursuant to the terms ordered was obtained by undue influence, and the court was biased against her. We find no merit in any of these arguments.

Whether to order specific performance is within the sound discretion of the trial court. *Zurcher v Herveat*, 238 Mich App 267, 300; 605 NW2d 329 (1999). An abuse of discretion occurs only when the trial court's decision falls outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "[S]pecific performance of a contract for the purchase of real estate may not be arbitrarily refused, but in the exercise of sound legal discretion should be granted, in the absence of some showing that to do so would be inequitable." *Zurcher*, 238 Mich App at 300. Because "[l]and is presumed to have a unique and peculiar value . . . contracts involving the sale of land are generally subject to specific performance." *In re Egbert R Smith Trust*, 480 Mich 19, 26; 745 NW2d 754 (2008).

Contrary to appellant's arguments, the record reflects that she appeared in open court on August 20, 2008, and knowingly and voluntarily agreed to pay \$46,500 for the property, with "no contingencies at all." Upon questioning by the trial court, appellant specifically indicated that she was willing to pay \$46,500 for the property, without any contingencies, and that she would be liable for the \$46,500 if she tried to back out. Further, appellant signed an order providing that she would purchase the property for \$46,500 "without any conditions or contingencies," that she "waives all defenses to purchasing the property" except payment in full, and that UPMC could seek specific performance against appellant if she thereafter attempted to back out of the purchase. The order also stated that if there were any conflict between the terms of appellant's prior written offer and the terms of the court's order, the court's order would prevail.

The record belies appellant's claims that her agreement to purchase the property under the terms announced in court was unduly influenced and not voluntarily made. Appellant was aware of the decrease in the assessed value of the property from the beginning. Appellant's claim that she did not know the property was a condominium is likewise unsupported. Indeed,

the order of August 20, 2008, which appellant signed, explicitly mentioned that Clarkston Woods, LLC, retained the right to review and approve any architectural drawings or building plans. Further, appellant's husband was her broker and a partner in UPMC, which owned the property. In addition, the trial court's questioning of appellant at the court hearing reveals that her decision to purchase the property under the terms stated was knowingly and voluntarily made. Thus, appellant explicitly waived all of the conditions contained in her prior written offer and explicitly agreed to be subject to specific performance and to a deficiency judgment if she failed to complete the purchase. *The Cadle Co v Kentwood*, 285 Mich App 240, 254-255; 776 NW2d 145 (2009).

While appellant was not a party to the underlying lawsuit, she specifically consented to the entry of the order against her. Further, appellant may not rely on her alleged failure to read the court's order as a defense. *Montgomery v Fidelity & Guaranty Life Ins Co*, 269 Mich App 126, 130; 713 NW2d 801 (2005). And even if appellant did not read the order before signing it, she specifically acknowledged on the record her understanding that she was required to purchase the property for \$46,500, without any contingencies, and that she would be liable for that full amount if she later attempted to back out of the purchase.

Although appellant was not represented by counsel at the court hearing, there is no constitutional right to counsel in civil cases. See *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001).

The record also belies appellant's claims that she was deprived of an opportunity to be heard and was treated unfairly. Quite the opposite, the record shows that the trial court treated appellant fairly despite her outbursts and interruptions.

Lastly, we note that it appears that the parties later settled their dispute and that plaintiffs allowed appellant to purchase the property rather than enforcing the deficiency judgment against her. Appellant stipulated to an order to that effect, and may not challenge that stipulation on appeal. *Farm Credit Servs of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998). The settlement agreement is a binding contract. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 663-664; 770 NW2d 902 (2009).

Affirmed.

/s/ Douglas B. Shapiro

/s/ Kathleen Jansen

/s/ Pat M. Donofrio